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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,362	11/10/2000	Yoshiaki Yokoyama	Yaguchi-0016	6786
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER LEUNG, JENNIFER A	
			ART UNIT 1764	PAPER NUMBER
			NOTIFICATION DATE 03/23/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/711,362

Applicant(s)

YOKOYAMA ET AL.

Examiner

Jennifer A. Leung

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 01 March 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1 and 3-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of Item 11.

The request for reconsideration has been considered, but it does not place the application in condition for allowance, for the same reasons set forth in the final Office Action. In addition, the following arguments are presented:

At page 7, lines 11-20, Applicants argue,

“... the recited exhaust system is recited as being for (i) exhausting a first hermetic chamber (ii) via the second opening and the third opening of the tube (iii) when the tube is inserted into a first opening of the first hermetic chamber. Clearly, the outlet (7a) is not the recited second or third openings, since the outlet (7a) is not on the condenser (4a), which is cited for the teaching of the tube of the claimed invention...”

Please note the Examiner did not refer to the outlet 7a as a second or third opening. In the Brassereau apparatus, the second opening was previously identified as the left open end of the condenser tube 4a, and the third opening was identified as the opening 4c on the opposite end of the condenser tube. The outlet 7a merely connects the apparatus to an exhaust or evacuation system, which was described in the disclosure but not shown in the figure.

At page 8, beginning at line 11, Applicants further argue,

“... the Bassereau reference does not disclose that the outlet (7a) can be or is used to exhaust the furnace (1) via opening (4c) when the condenser (4a) is inserted in the furnace (1). The condenser (4a) is provided within the opening of the furnace (1) during processing, and the Bassereau reference teaches that the system is in a vacuum state for processing and that the condenser (4a) is maintained in that vacuum state even after being removed from the furnace (1)... The Bassereau reference does not discuss when or even if the system is exhausted, and no suggestion is provided therein of exhaust flowing from the furnace (1) out of the system via opening (4c). The Bassereau reference does not disclose or suggest inserting the condenser (4a) within the opening of the furnace (1), and

then exhausting the furnace (1) via opening (4c). The opening (4c) on the condenser (4a) is merely described as equalizing the pressure between the outside and the inside of the condenser (4a) to prevent the condenser (4a) from being subjected to pressure forces...”

The Examiner respectfully disagrees.

Bassereau discloses that, “[a]n opening 4c in the condenser permits the pressure within and outside the condenser to be balanced, and an outlet 7a permits the chamber 7 and the chambers conjoined to be evacuated.” (see column 4, lines 30-36; with emphasis added). As clearly seen in the figure, the furnace chamber 1, the chamber defined by the condenser tube 4a, the chamber 5, and the chamber 7 are all conjoined to one another, i.e., they are in open flow communication with one another. The open flow communication between the chambers is established via the first opening on the furnace wall, the second opening on the condenser tube and the third opening on the condenser tube, when the tube 4a has been inserted into the first opening during the metal reduction operation. Therefore, the evacuation system, provided in connection with the opening 7a, is structurally capable of “exhausting the first hermetic chamber via the second opening and the third opening of the tube when the tube is inserted into the first opening.”

Bassereau further discloses that the pressure within the furnace chamber 1 at the initial stage of operation, e.g., when a fresh charge of metallic material is fed to the furnace, is atmospheric pressure. It is only after the reduction operation has begun, i.e., when the tube 4a is inserted into the first opening, that a vacuum or evacuated state is established within the furnace chamber 1 (see column 1, lines 1-15). Thus, the evacuation system that is connected to the outlet 7a must be capable of drawing out gas/vapor from the furnace chamber 1, via the condenser tube 4a and through the outlet 7a, in order to establish a vacuum state within the furnace chamber 1

during the reduction operation.

Please note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding the combination of Tejima et al. and Bassereau, Tejima et al. discloses an exhaust system **606** for exhausting the metallic vapors through the plurality of first openings when the first hermetic doors **610** are opened, and a recovery means in the form of a chamber **611** in communication with a recovering chamber **605** for receiving and condensing the metallic vapor exhausted through each of the first openings. Bassereau was then relied upon to teach the missing "tube" feature as claimed. The Examiner asserts that the modified apparatus of Tejima et al. would then meet the claims, with the tube being exhausted in a similar manner as indicated in Bassereau (see comments above).

* * *


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Leung whose telephone number is (571) 272-1449. The examiner can normally be reached on 9:30 am - 5:30 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn A. Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jennifer A. Leung 
March 18, 2007

Supervisor



GLENN A. CALDAROLA
PRIMARY EXAMINER
TC GROUP 1700